

EXHIBIT 85

Excerpts of Deposition of Kyle Kingsbury

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Cung Le, Nathan Quarry, Jon)
Fitch, Brandon Vera, Luis Javier)
Vazquez, and Kyle Kingsbury on)
behalf of themselves and all)
others similarly situated,)
)
Plaintiffs,)
)
vs.) Case No. 2:15-cv-
) 01045-RFB-(PAL)
Zuffa, LLC, d/b/a Ultimate)
Fighting Championship and UFC,)
)
Defendants.)
)

DEPOSITION OF KYLE KINGSBURY

Taken at the Offices of Boies, Schiller & Flexner
300 South 4th Street, Suite 800
Las Vegas, Nevada

On Friday, February 17, 2017
At 9:19 a.m.

Reported by: Jane V. Efaw, CCR #601, RPR

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1 BY MR. WIDNELL:

2 Q. Let's take a guy like Emanuel Newton. Would
3 you say that he was at least an accomplished fighter
4 if he could knock out a fighter like King Mo?

5 A. As I stated earlier, styles makes fight.
6 And just because he's beaten King Mo twice does not
7 qualify him as an elite level fighter.

8 I'm not sure what the definition of an
9 accomplished fighter is, but being 26 and 11 with
10 wins over some good guys, he has accomplished a lot
11 in his career. He's fought a lot. He's had good
12 success. More wins than losses. That's as far as I
13 would say on Emanuel Newton.

14 Q. You wouldn't say he's elite, but he's at
15 least an accomplished fighter given his track record
16 in an organization that's not the UFC; is that
17 accurate?

18 MR. DELL'ANGELO: Objection to form.

19 THE WITNESS: I think Emanuel Newton is a
20 good fighter. I don't know that he's elite or not
21 because he hasn't fought in the UFC and he hasn't --
22 other than King Mo, I haven't seen him -- other guys
23 that are top talent he's lost to. Liam McGeary he
24 lost to. Phil Davis he lost to, an elite level
25 fighter from the UFC. So that's my opinion.

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1 BY MR. WIDNELL:

2 Q. Would you say that Bellator has other
3 fighters like Emanuel Newton who are accomplished
4 fighters even if they're not elite fighters?

5 A. I believe Bellator has some good fighters.

6 Q. And by "good fighters," you mean fighters
7 who aren't elite fighters but are still good
8 fighters; is that accurate?

9 A. They may have a couple elite fighters. I
10 haven't looked at their roster. I know that they're
11 not on par with the UFC. And if you look down the
12 classes, they may have a few guys that would do well
13 in the UFC, but for the most part, that is simply not
14 the case.

15 Q. So what makes you a good fighter but not an
16 elite fighter?

17 MR. DELL'ANGELO: Objection to the form to
18 the extent it calls for a legal conclusion.

19 THE WITNESS: Well, I can look at Emanuel
20 Newton's record and see that he's won more than he's
21 lost. He's had some exciting victories. He's beaten
22 some talented guys. In my opinion, I think he's a
23 good fighter.

24 BY MR. WIDNELL:

25 Q. So if you've appeared in, say, one or two

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1 MMA bouts for organizations other than UFC and you've
2 won those bouts, would that make you a good
3 professional MMA fighter?

4 MR. DELL'ANGELO: Objection to form.

5 THE WITNESS: I don't think two wins -- two
6 wins in any organization outside of the UFC wouldn't
7 necessarily make you good or bad.

8 BY MR. WIDNELL:

9 Q. Okay. What about ten wins?

10 MR. DELL'ANGELO: Objection to form. Calls
11 for speculation.

12 THE WITNESS: It calls for speculation
13 because it depends on who he's fighting, how he's
14 won. There's a number of factors that go into that.

15 BY MR. WIDNELL:

16 Q. Okay. So let's say it's ten wins, and one
17 of them is a former UFC fighter.

18 MR. DELL'ANGELO: Objection. Hypothetical.

19 THE WITNESS: Is it Dan Severn, who is still
20 fighting at 50 something, who was a UFC champ? I
21 mean, I don't know.

22 BY MR. WIDNELL:

23 Q. Okay. That's a fair question. How long do
24 you think someone who leaves the UFC can stay a good
25 and elite fighter. Let's take Phil Davis. Do you

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1 think Phil Davis is an elite fighter now?

2 MR. DELL'ANGELO: Objection to form. Calls
3 for a legal conclusion and speculation.

4 THE WITNESS: In my opinion, Phil Davis is
5 an elite level fighter. In my opinion, Jon Fitch is
6 an elite level fighter. They both left. They're
7 both fighting in other organizations and having
8 success.

9 BY MR. WIDNELL:

10 Q. So I asked you if someone beats one or two
11 former UFC fighters who are still able to fight
12 effectively or not too old, based on your definition.
13 I guess how we figure that out is difficult. But in
14 that world, would that person be a good fighter but
15 not an elite fighter?

16 MR. DELL'ANGELO: Objection to the extent it
17 calls for a legal conclusion. That is a
18 hypothetical.

19 THE WITNESS: So if we are to imagine that a
20 fighter is only two fights and his two fights are
21 against former UFC fighters who are still relatively
22 young and accomplished and that he's able to beat
23 those former UFC fighters who are still young and
24 accomplished, I might say he's a good fighter.

25 If he has highlight real knockouts, I might

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1 say this is some guy to watch and may be an elite
2 level fighter one day. I'm not sure. When Jon Jones
3 is coming up, everyone was talking about him. The
4 way he was winning, throwing guys. He was on
5 everyone's radar. The fact how young he was when he
6 was winning.

7 (Whereupon Defendant's Exhibit 94
8 was marked for identification.)

9 BY MR. WIDNELL:

10 Q. I'm handing you now what's Exhibit 94. Does
11 this look familiar to you?

12 A. Yes, it does.

13 Q. This is the guy you didn't want to fight;
14 right?

15 A. That is correct.

16 Q. Because he was a no name when you were
17 fighting him in terms of notoriety, but he was a very
18 good fighter; is that accurate?

19 MR. DELL'ANGELO: Objection to form.
20 Mischaracterizes the witness's testimony.

21 THE WITNESS: That's not what I said. What
22 I said was he clearly was known among fighters in the
23 MMA world. He had accomplished a lot of victories.
24 He had fought a lot in Brazil. He stayed active. He
25 had phenomenal coaching. He trained with one of the

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1 greatest light heavyweights of all time on a regular
2 basis who had nothing but high praise for him. So he
3 had notoriety. He just wasn't known among the fans.

4 So in terms of what I would deem a bad
5 fight, a bad fight would be against somebody the fans
6 don't know who you're supposed to beat in the fans'
7 eyes. And if you win, it doesn't do much for your
8 notoriety. And if you lose, it can be devastating to
9 your career and the progress you make towards the
10 title.

11 So in the opinion of random ranking systems
12 like Fight Matrix, that might drop you out of the top
13 100 to lose to a guy who is not well known. I'm not
14 sure.

15 BY MR. WIDNELL:

16 Q. Okay. But he beat you in his first fight in
17 the UFC. When he did that, when he fought in that
18 fight, was he an elite fighter?

19 MR. DELL'ANGELO: Objection to the form to
20 the extent it calls for a legal conclusion.

21 THE WITNESS: I believe I stated earlier
22 that if you fight in the UFC, you are an elite level
23 fighter. So fighting me in the UFC made him an elite
24 level fighter.

25 I might also say that it's possible Glover

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1 Teixeira was an elite level fighter prior to our
2 match based on how he was winning.

3 BY MR. WIDNELL:

4 Q. So when did he become an elite level
5 fighter?

6 MR. DELL'ANGELO: Objection to form to the
7 extent it calls for a legal conclusion.

8 THE WITNESS: In my opinion, he clearly
9 displayed a skill set that was on par with anybody in
10 the world.

11 And although he hadn't fought at the highest
12 level at that point, the way he was winning,
13 absolutely destroying guys, the notoriety he had from
14 people like Chuck Liddell and Coach John Hackleman, I
15 knew he'd be very successful in the UFC.

16 BY MR. WIDNELL:

17 Q. And my question is when did he become an
18 elite fighter?

19 MR. DELL'ANGELO: Objection to form to the
20 extent it calls for a legal conclusion.

21 THE WITNESS: I'm not sure.

22 BY MR. WIDNELL:

23 Q. Is that because it's hard to tell when
24 someone becomes an elite fighter or is an elite
25 fighter?

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1 MR. DELL'ANGELO: Object to form to the
2 extent it calls for a legal conclusion.

3 BY MR. WIDNELL:

4 Q. Actually, let me rephrase that. If you're
5 looking at a fighter who isn't fighting for the UFC,
6 is it hard to tell whether or not that fighter is an
7 elite fighter?

8 MR. DELL'ANGELO: Objection to form. It
9 calls for a legal conclusion and speculation.

10 THE WITNESS: I think some people are easier
11 if you've seen them fight. Everyone watched Fedor
12 fight. I don't think there was much argument if he
13 was an elite level fighter or if he could have
14 success in the UFC even without ever having fought in
15 the UFC.

16 It was my opinion that Glover Teixeira was
17 as good as the people closest to him were saying.
18 And I learned that firsthand in our fight. He had
19 continued success, went on to fight for the light
20 heavyweight championship. I completely agree that
21 he's an elite level fighter.

22 At which point he becomes an elite level
23 fighter, if it's prior to him being in the UFC, I'm
24 uncertain. But for sure once he's in the UFC, he's
25 an elite level fighter.

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1 BY MR. WIDNELL:

2 Q. How about Sherdog?

3 MR. DELL'ANGELO: Same objections.

4 THE WITNESS: I don't know what fans -- what
5 they determine to be an elite level fighter and how
6 they determine that.

7 BY MR. WIDNELL:

8 Q. Are you aware of any instance where a fan
9 has distinguished between elite-level fighters and
10 non-elite-level fighters. Have you ever seen
11 something that discussed that?

12 MR. DELL'ANGELO: Same objections.

13 THE WITNESS: I have to speak personally.
14 To give you something other than I don't know, I
15 would be guessing. I can say that I have friends who
16 are fans of the sport who recognize the fact that if
17 you fight in the UFC, you are an elite level fighter
18 and who also agree that Fedor Emelianenko was an
19 elite level fighter who has not fought in the UFC.
20 Past that, there's not been a discussion of Emanuel
21 Newton or other guys like that.

22 BY MR. WIDNELL:

23 Q. Do media outlets distinguish between elite
24 professional MMA fighters and non-elite professional
25 MMA fighters?

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1 MR. DELL'ANGELO: Objection. Calls for a
2 legal conclusion. Speculation. Hypothetical. You
3 can answer if you know if media organizations do.

4 THE WITNESS: I think certain media
5 organizations have their own rankings. I think
6 that -- and I have no idea how they determine that.
7 It might be one guy's blog and opinion. It might be
8 a team of three guys and a girl. I have no idea how
9 they come up with the rankings.

10 They may take an average of what everyone
11 else's rankings are. I don't know. Maybe their
12 definition of "elite" is different than mine. I can
13 only speculate on that.

14 BY MR. WIDNELL:

15 Q. You said there was no certification to
16 demonstrate that you're an elite professional MMA
17 fighter. Is there an industry standard for what an
18 elite professional MMA fighter is?

19 MR. DELL'ANGELO: Objection to form to the
20 extent it calls for a legal conclusion.

21 THE WITNESS: I'm not sure what industry
22 standards would be. If you're thinking of like a
23 general consensus.

24 BY MR. WIDNELL:

25 Q. Does the MMAFA have a standard for what an

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1 elite professional fighter is?

2 MR. DELL'ANGELO: Objection. Calls for a
3 legal conclusion. Speculation. Lack of foundation.

4 THE WITNESS: I'm not sure if the MMAFA does
5 or does not. As I've stated before, I've been to a
6 couple of meetings with them. I know one of their
7 goals is to get the Ali Act to MMA, and I'm onboard
8 with that.

9 BY MR. WIDNELL:

10 Q. Are you aware of any other sort of industry
11 standard for what an elite MMA fighter -- what would
12 make an elite professional MMA fighter?

13 MR. DELL'ANGELO: Objection. Calls for a
14 legal conclusion. I think compound.

15 THE WITNESS: I believe I've stated my
16 personal opinion on what it means to be an elite
17 level fighter. And I can't speak upon others'
18 opinions on what would make an elite level fighter.

19 BY MR. WIDNELL:

20 Q. Okay. So is that because you're not aware
21 of any actual standard that defines what an elite
22 professional MMA fighter is?

23 MR. DELL'ANGELO: Objection to the extent it
24 calls for a legal conclusion.

25 THE WITNESS: I'm not sure how to answer

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1 that.

2 BY MR. WIDNELL:

3 Q. Why aren't you sure?

4 MR. DELL'ANGELO: Objection to the form.

5 THE WITNESS: Well, I would need to know
6 everything in the industry. The opinions of all MMA
7 writers. The opinions of all the fans. The opinion
8 of every fighter.

9 BY MR. WIDNELL:

10 Q. And you don't know that; is that right?

11 A. I do not know the opinion of every fan. I
12 do not know the opinion of everyone writing a
13 rankings blog online. I don't know that.

14 Q. So you're not aware of an industry standard
15 that's widely known within the industry for what an
16 elite professional MMA fighter is; is that correct?

17 MR. DELL'ANGELO: Objection to the form to
18 the extent it calls for a legal conclusion.

19 THE WITNESS: Not that I can recall right
20 now.

21 BY MR. WIDNELL:

22 Q. Not that you can recall right now because
23 you think there might be such a standard, but you
24 just can't remember what it is?

25 A. It is possible.

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1 Q. Where would you have seen that standard?

2 MR. DELL'ANGELO: Object to the form.

3 THE WITNESS: I don't know. I don't recall.

4 BY MR. WIDNELL:

5 Q. Do you recall seeing a standard at all?

6 A. I've never seen -- well, I shouldn't say
7 never. I don't recall seeing a standard definition
8 of an elite level fighter.

9 Q. Sitting here today, do you have any
10 knowledge of the existence of such a standard?

11 MR. DELL'ANGELO: Objection to the extent it
12 calls for a legal conclusion.

13 THE WITNESS: I have my opinion, and that
14 opinion is shared with others on what it means to be
15 an elite level fighter. I think as with most things
16 in MMA, such as the rankings, a lot of that is
17 opinion.

18 BY MR. WIDNELL:

19 Q. Is there any criteria consistently used by
20 the industry to define what an elite professional MMA
21 fighter is?

22 MR. DELL'ANGELO: Objection to the form to
23 the extent it calls for a legal conclusion
24 speculation and speculation.

25 ///

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1 BY MR. WIDNELL:

2 Q. Just to be clear. I'm not asking for a
3 legal conclusion about what an elite professional
4 fighter is. I'm asking if there is an industry set
5 of criteria that's commonly applied to determine
6 whether a fighter is an elite professional MMA
7 fighter.

8 Do you understand that? I'm not asking what
9 a court would say. I'm asking if there is a commonly
10 understood set of criteria used within the industry
11 to define elite professional MMA fighters.

12 MR. DELL'ANGELO: Just to be clear. Are you
13 asking with respect to the use of the term "elite
14 professional MMA fighter" as distinct from --

15 MR. WIDNELL: Exactly.

16 MR. DELL'ANGELO: -- a usage of that term in
17 the litigation.

18 MR. WIDNELL: Exactly.

19 BY MR. WIDNELL:

20 Q. I'm just asking if there is -- for the term
21 "elite professional MMA fighter," is there a set of
22 criteria that is commonly used in the industry to
23 define what an elite professional MMA fighter is?

24 A. Yes. I understand the question. I believe
25 that set of criteria would be the notoriety of the

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1 fighter, if they're well known, if they have a draw.
2 Their skill set that they displayed in their fights.
3 How they win.

4 And as I stated before, if they can fight in
5 the top-tier organization in the world, in the UFC,
6 those are the criteria I would state that would make
7 someone an elite level fighter.

8 Q. So you said notoriety, if they're well
9 known, if they have a draw; is that correct? Is that
10 one of the criteria?

11 A. That is one of the criteria.

12 Q. How do you measure that?

13 A. You could measure that in a number of ways.
14 But one of the ways you would measure that is if
15 people want to watch them fight, if they know who
16 they are or -- I can give you an example of myself.

17 Before I was in the UFC, did I have
18 notoriety? I was not extremely well known
19 internationally, but I had sold out the Celebrity
20 Theatre in Phoenix as the main event I think in my
21 second fight. So there was some notoriety there
22 based on the way that I won my first fight in 30
23 seconds.

24 For a guy like Muhammed Lawal, he has
25 notoriety based on the people that he's won and the

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1 way that he's won. The fact that he was a high-level
2 going in MMA and a terrific athlete.

3 Q. So is there a quantifiable metric for
4 measuring whether or not someone has sufficient
5 notoriety to be an elite MMA professional fighter?

6 MR. DELL'ANGELO: Objection to form.

7 THE WITNESS: I'm not sure. If you want me
8 to say, like, it takes a certain number of fights or
9 a certain number of wins under a certain time period,
10 again, it's not -- trying to break it down into
11 single pieces and then piece it all together doesn't
12 necessarily work. It works in the way that you would
13 look and analyze somebody and say, Do they meet these
14 things? Are they a draw to people and watch them
15 play? Do they have a wide variety of skills, or are
16 they a master of a few skills? How they win their
17 fights. It's the whole. It's not just single piece
18 to that.

19 BY MR. WIDNELL:

20 Q. Okay. But it sounds like fighting in the
21 UFC always makes you an elite professional MMA
22 fighter; is that correct?

23 A. As I stated earlier, that is correct. And
24 no different than if you play in the NFL, and you
25 could be a bench warmer. You're still an elite level

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1 the question.

2 THE WITNESS: Then I would say the
3 attorney/client privilege applies, yes.

4 BY MR. WIDNELL:

5 Q. I think just recently you said that you
6 believe there are additional examples. Is that
7 correct?

8 A. That is correct.

9 Q. But you don't recall them now; is that
10 correct?

11 A. That is correct.

12 Q. But you might recall them in the future; is
13 that correct?

14 A. That is correct.

15 Q. Okay. Are there any other examples of Zuffa
16 threatening or punishing fighters that you are aware
17 of?

18 MR. DELL'ANGELO: Object to the form.

19 THE WITNESS: As I stated earlier, I'm aware
20 of other examples of the way the UFC threatened to
21 punish fighters, but I don't recall any at this time.

22 MR. WIDNELL: All right. I think I'm
23 finished with my initial questions. Do you have any
24 questions you want to conduct?

25 MR. DELL'ANGELO: Let's go off the record

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1 real quick.

2 THE VIDEOGRAPHER: We are now going off the
3 record. The time is approximately 4:35 p.m.

4 (A brief recess was taken.)

5 THE VIDEOGRAPHER: We are now back on the
6 record. The time is approximately 4:30 p.m.

7 MR. DELL'ANGELO: Plaintiffs have no
8 questions at this time. We'll read and sign.

9 THE VIDEOGRAPHER: We're done?

10 MR. WIDNELL: We're done.

11 THE VIDEOGRAPHER: This concludes the video
12 deposition of Kyle Kingsbury. We are going off the
13 record. The time is approximately 4:40 p.m.

14 (Thereupon the taking of the
15 deposition was concluded at
16 4:40 p.m.)

17 * * * * *

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1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

15 * * * * *

17 I, KYLE KINGSBURY, deponent herein, do
18 hereby certify and declare the within and foregoing
19 transcription to be my deposition in said action;
20 that I have read, corrected and do hereby affix my
21 signature to said deposition.

22 _____
23 KYLE KINGSBURY, Deponent

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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

) SS:

3 COUNTY OF CLARK)

4 I, Jane V. Efaw, CCR No. 601, do hereby certify:

5 That I reported the taking of the deposition of
6 the witness, KYLE KINGSBURY, at the time and place
7 aforesaid;

8 That prior to being examined, the witness was by
9 me duly sworn to testify to the truth, the whole
10 truth, and nothing but the truth;

11 That I thereafter transcribed my shorthand notes
12 into typewriting and that the typewritten transcript
13 of said deposition is a complete, true and accurate
14 transcription of said shorthand notes taken down at
15 said time, and that a request has been made to review
16 the transcript.

17 I further certify that I am not a relative or
18 employee of counsel of any party involved in said
19 action, nor a relative or employee of the parties
20 involved in said action, nor a person financially
21 interested in the action.

22 Dated at Las Vegas, Nevada, this ____ day of
23 _____, 2017.

24 _____
25 Jane V. Efaw, CCR #601